

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

RODNEY BROADNAX, et al.,

Plaintiffs,

v.

CIVIL ACTION No. 1:22-00437

UNITED STATES OF AMERICA, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion for a stay of discovery pending a ruling on its motion to dismiss for lack of subject matter jurisdiction. (ECF No. 58). Arguing that the discretionary function exception bars plaintiffs' claims, the United States has moved to dismiss the second amended complaint. Plaintiffs oppose a stay of discovery.

"A party is not entitled to discovery that would be futile or otherwise inadequate to establish a sufficient basis for jurisdiction." Seaside Farm, Inc. v. United States, 842 F.3d 853, 860 (4th Cir. 2016) (citing Rich v. United States, 811 F.3d 140, 146 (4th Cir. 2015)). If, as the United States argues, the discretionary function exception applies, the case ends. Therefore, a stay of discovery would be appropriate. See id. ("The district court was correct to recognize that the discretionary function exception is a jurisdictional threshold that must be considered before moving to the merits of an FTCA

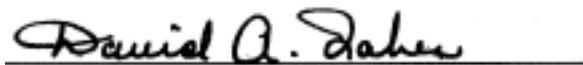
claim. . . . The district court was well within its discretion to limit discovery to this dispositive issue."). However, plaintiffs have argued that they need limited discovery as to the jurisdictional issues in the case.

Accordingly, pursuant to 28 U.S.C. § 636(b)(1)(A), the court hereby **REFERS** the motion to stay discovery to Magistrate Judge Aboulhosn for a determination of (1) whether plaintiffs can establish a need for jurisdictional discovery; (2) if they can, the scope of that discovery; and (3) a proposed timeline for any discovery deemed necessary.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record and to Magistrate Judge Aboulhosn.

IT IS SO ORDERED this 24th day of June, 2024.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge